

## An ACLU-PA Guide to How Courts Collect Fines, Costs, and Restitution, and the Consequences of Nonpayment

Courts of common pleas and magisterial district courts use a variety of methods to collect fines, costs, and restitution. Unfortunately, there is no uniformity across the state—individual courts and even individual judges vary in how they collect these funds. This document sets forth the collections processes defined by the laws and court rules, but also notes that those requirements are not always followed. Attorneys and defendants should contact their local courts to understand how they operate in practice.

### What methods can courts use to collect court debt?

Payment Plans: Defendants technically owe all fines, costs, and restitution immediately upon sentencing, but because most defendants cannot afford to immediately pay in full, courts generally place defendants on monthly installment payment plans.<sup>1</sup>

- A defendant who cannot pay in full must be placed on a reasonable payment plan, based on the defendant’s individual financial circumstances, before the defendant can be punished for nonpayment.<sup>2</sup> Unfortunately, some courts skip this step and place defendants on “standard” payment plans, i.e. \$50 or \$100 per month, that are not affordable for them. If that happens, the defendants should ask for a hearing to adjust the payment plan to one that is affordable.
  - A defendant always has an option to ask the court for a hearing to set or modify a payment plan.<sup>3</sup>
  - According to the law, unless the defendant consents to a payment plan without a hearing, a court can only enter an order setting a payment plan *after* holding a hearing on the defendant’s financial status.<sup>4</sup>
  - For more information on the legal requirements governing the imposition of affordable payment plans, refer to “An ACLU-PA Guide to Determining Whether a Defendant is “Able to Pay” Fines, Costs, or Restitution.”<sup>5</sup>
  - Courts have the authority to impose payment plans at sentencing, or at any time if the defendant is unable to pay.<sup>6</sup> Courts also have the authority to modify payment plans if the defendant is unable to afford an existing payment plan.<sup>7</sup>
  - It is a common practice for judges to delegate payment plan authority to the probation department or other court staff. While not explicitly authorized by statute, there is likely nothing wrong with such practice. However, unless the court enters an order setting a payment plan, it is not a binding court order that could later lead to contempt proceedings if the defendant fails to comply.
- The best practice is generally for the defendant to agree to a payment plan with the court at sentencing, based on what the defendant is reasonably able to pay each month, while

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<sup>1</sup> For fines, the court must specify “when it is to be paid” at the time of sentencing. 42 Pa.C.S. § 9758(a).

<sup>2</sup> *Commonwealth ex. rel. Parrish v. Cliff*, 304 A.2d 158, 161(Pa. 1973); Pa.R.Crim.P. 706(B).

<sup>3</sup> Pa.R.Crim.P. 706(D); Pa.R.Crim.P. 456.

<sup>4</sup> Pa.R.Crim.P. 706(B); 42 Pa.C.S. § 9730(b).

<sup>5</sup> Available at [www.aclupa.org/finesandcosts](http://www.aclupa.org/finesandcosts).

<sup>6</sup> 42 Pa.C.S. § 9758(b) (fines); 18 Pa.C.S. § 1106(c)(2)(ii) (restitution); 75 Pa.C.S. § 6504(a) (traffic offenses); Pa.R.Crim.P. 706(B) (fines and costs); Pa.R.Crim.P. 456 (fines, costs, and restitution in summary cases).

<sup>7</sup> 42 Pa.C.S. § 9730(b)(3); Pa.R.Crim.P. 706(D).

counsel is present. Counsel can help ensure that the court has the information necessary to set a reasonable monthly payment by preparing the client to explain their monthly income and expenses.

- By starting with an affordable payment plan from the beginning, the court and the defendant can help avoid the risk that the defendant will later default.

Civil Judgments: Courts *automatically* enter civil judgments at or shortly after sentencing in all cases where a defendant owes more than \$1,000 in total fines, costs, and/or restitution.<sup>8</sup> Such civil judgments are mandated by law.

- In cases where a defendant owes less than \$1,000, the court has discretion whether to enter a civil judgment.<sup>9</sup> The practices vary from county to county. In Philadelphia, for example, the court enters civil judgments in all cases, including minor traffic cases.
- The civil judgments are then entered as liens against any property owned by the defendant and interferes with the transfer of that property.<sup>10</sup>
- The judgments are in favor of whomever collects the fines, costs, and restitution (the probation department by default).<sup>11</sup> Courts could use civil processes to enforce them, as with any “normal” civil judgment owned by a plaintiff in a civil case.<sup>12</sup> But we do not see that happen on a regular basis.

Collecting from Inmate Accounts: While defendants are incarcerated, both the Department of Corrections and county jails deduct funds from inmate accounts to pay court-imposed fines, costs, and restitution.<sup>13</sup>

- As long as an inmate has at least \$10 in the inmate account, the Department of Corrections deducts 20% of all incoming funds to put towards fines, costs, and restitution.<sup>14</sup>
- County jails each have different policies that vary from county to county.
- The amount that is collected must be remitted to the court and applied against the total balance owed.
- These deductions have been extensively litigated and upheld, as long as the defendant receives notice of the deduction policy and has an opportunity to contest any erroneous deductions, i.e. if the amount that the jail is attempting to deduct exceeds the amount imposed by the court.<sup>15</sup>

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<sup>8</sup> 42 Pa.C.S. § 9728(b)(1).

<sup>9</sup> *Id.* at § 9728(b)(2).

<sup>10</sup> *Id.* at § 9728(d).

<sup>11</sup> *Id.* at § 9728(a).

<sup>12</sup> *Id.*; *Commonwealth v. Rosser*, 407 A.2d 857, 860 (Pa. Super. Ct. 1979) (explaining that enforcement could be through “civil proceedings” or through a court’s contempt powers).

<sup>13</sup> 42 Pa.C.S. § 9728(b)(5). These are referred to as “Act 84” deductions, referring to Act 84 of 1998, which first authorized such deductions.

<sup>14</sup> See Dep’t of Corrections Policy DC-ADM 005 at 3-10 and Attachment 3-A, <https://www.cor.pa.gov/About%20Us/Pages/DOC-Policies.aspx>. Although § 9728(b)(5)(i) requires that deductions be at least 25%, the Department of Corrections appears to have not yet updated its internal policies.

<sup>15</sup> See, e.g., *Danysh v. Dep’t of Corrections*, 845 A.2d 260, 263 (Pa. Commw. Ct. 2004) (“Our Courts have repeatedly held that Section 9728(b)(5) of the Sentencing Code authorizes the Department to make deductions from income deposited to an inmate’s account.”). For a summary of the due process issues, see *Johnson v. Wtzel*, 238 A.3d 1172, 1183 (Pa. 2020).

- Trial courts have no *direct* authority to tell the Department of Corrections to stop deductions.<sup>16</sup> However, a trial court *can* specify that the defendant does not have to start paying fines, costs, and restitution until *after* the defendant completes the period of incarceration.<sup>17</sup>
- At sentencing, counsel should therefore consider asking that the court specify a start date for payments so that the defendant does not have to start making payments until after release from jail/prison, which will ensure that the defendant is not effectively cut off from the commissary and other financial expenditures while incarcerated.

Garnishing of Wages and Bank Accounts: Courts may garnish wages through a wage attachment to collect fines, costs, and restitution,<sup>18</sup> and they may also deduct funds directly from bank accounts if the defendant consents.<sup>19</sup>

- At sentencing, the trial court may enter an order garnishing up to 25% of a defendant’s gross wages.<sup>20</sup> Counsel and defendants should be prepared to provide the court with information about how much a defendant can afford to pay and whether 25% would be unreasonable in light of the defendant’s financial circumstances.
- After sentencing, the trial court can only garnish a defendant’s wages if it first holds a hearing and finds that the defendant is financially able to pay.<sup>21</sup>
- However, the general restrictions on payment plans—that they be reasonable and affordable based the defendant’s individual financial resources—also apply to any wage garnishment.<sup>22</sup>

Use of a Private Debt Collection Agency: Each judicial district may contract with a private debt collection agency to collect fines, costs, and restitution.<sup>23</sup>

- If a case is referred to a private debt collector, the debt collector may add a surcharge of up to 25% of the total amount of debt to be collected.<sup>24</sup> Thus, if a defendant owes \$1,000, the referral to the private debt collector will increase the total amount owed to \$1,250.
  - This 25% fee is collected first and kept by the debt collector.<sup>25</sup> Only after that fee is collected in full does any money go to the court (for fines and costs) or victims (for restitution).

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<sup>16</sup> *Commonwealth v. Jackson*, 858 A.2d 627, 631 (Pa. Super. Ct. 2004) (en banc) (“Commonwealth Court, in such matters as those involving Act 84 deductions, possesses exclusive, original jurisdiction.”).

<sup>17</sup> *Lambing v. Dep’t of Corrections*, 488 M.D. 2017, 2020 WL 4219715 at \*6 (Pa. Commw. Ct. July 23, 2020) (unpublished) (“Here, the March 17, 2008 sentencing court’s orders state that Lambing ‘shall pay the total due in monthly installments during the period of parole[.]’ See Petition for Review, Exhibit C, Sentencing Orders. Thus, it is clear that the sentencing court did not authorize the Department to make deductions for court-ordered costs while Lambing is incarcerated.”).

<sup>18</sup> 42 Pa.C.S. §§ 8127(a)(5) and 9730(a.1).

<sup>19</sup> *Id.* at § 9730(a).

<sup>20</sup> *Id.* at § 9730(a.1).

<sup>21</sup> *Id.* at § 9730(b)(2).

<sup>22</sup> *Commonwealth ex. rel. Parrish v. Cliff*, 304 A.2d 158, 161 (Pa. 1973) (requiring that courts impose payment plans that are “reasonable” in light of the defendant’s financial circumstances); Pa.R.Crim.P. 706(B).

<sup>23</sup> 42 Pa.C.S. § 9730.1(b).

<sup>24</sup> *Id.* at § 9730(b)(2).

<sup>25</sup> *Id.* at § 9730(b)(3). It seems to vary in practice whether the entire 25% surcharge on all fines, costs, and restitution is collected first, or if instead the first 25% of each individual payment goes to the debt collector with the remaining balance going to the court.

- Pennsylvania law states that, the court can only refer a case to a private debt collector after holding a hearing and finding the defendant “financially able to pay.”<sup>26</sup> Unfortunately, some courts skip that step.
  - Unless the court first holds a hearing and makes a finding on the record that the defendant is able to pay, any referral to a private debt collection agency is illegal. A number of courts nevertheless seem to routinely make such referrals without holding hearings. The referral appears on a court docket in CPCMS as “The Court Determined Responsible Participant is Financially Able to Pay Fines/Costs/Restitution” and “Referral of Account to Collection Agency.”
  - A defendant who is placed in collections without a hearing should first ask the court’s collections staff to return the case from collections, particularly if the defendant is willing to agree to a payment plan. In addition, the defendant can file a motion with the court to have the referral reversed and the collections surcharge deducted from their account in light of the illegal referral.
- If four years have elapsed since the referral and the private debt collection agency has been unable to either contact the defendant or has not collected any money, the case must be returned from the private debt collection agency.<sup>27</sup>
- A judge on the court of common pleas can take the case back from the debt collector at any time.<sup>28</sup>

Seizing Bail to Pay Fines, Costs, and Restitution: The court may seize a defendant’s bail money to pay any fines, costs, and restitution that are imposed upon conviction in the same case for which the defendant deposited bail.<sup>29</sup>

- The defendant can stop such seizure by demonstrating that it would constitute an “undue hardship” for the defendant to lose that money. The same standards that generally govern whether a defendant is able to pay should apply here, too.<sup>30</sup>
- This seizure can occur only upon a motion from the District Attorney.<sup>31</sup>
- The court *cannot* seize bail money to be used to pay any fines, costs, or restitution from any other cases.<sup>32</sup> If this happens to a defendant, the defendant—through counsel—should file a motion to ask for the return of the unlawfully seized bail funds.
- Only bail posted by the defendant—not any third party such as friends or family—can be seized in this way.<sup>33</sup>

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<sup>26</sup> 42 Pa.C.S. § 9730(b)(2) provides that, if a court holds a hearing under § 9730(b)(1) and finds the defendant “financially able to pay,” the court may “turn the delinquent account over to a private collection agency.” Although § 9730.1(a)—the statute setting forth the legal parameters of the private debt collector—states that a court need not hold “a hearing pursuant to *this* section” prior to referral, a hearing *is* required under § 9730 prior to any referral.

<sup>27</sup> *Id.* at § 9730.1(c)(2).

<sup>28</sup> *Id.* at § 9730.1(c)(3).

<sup>29</sup> Pa.R.Crim.P. 535(E).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

## Who collects court debt?

At the common pleas level, the probation department is by default in charge of collecting all fines, costs, and restitution, even if a defendant is not on probation.<sup>34</sup> However, the county commissioners—with the approval of the president judge—can appoint another entity to perform such collections.<sup>35</sup> This, of course, varies from county to county. For example, in Philadelphia an entity called the Office of Court Compliance handles all collections and works with defendants to enter payment plans, including for Municipal Court cases. In Montgomery County, the Clerk of Courts handles collections. You should contact your local court to ask how they collect.

At the magisterial district court level, each individual MDJ collects their own fines, costs, and restitution. In Philadelphia, the Traffic Division of the Municipal Court handles its own collections through hearing officers.

As is described above, courts may also refer debt to a private debt collection agency for collection.

## How long do defendants owe court debt?

Our research shows that most public defender clients still owe fines, costs, and restitution at least ten years after sentencing.<sup>36</sup> Although the issue has not been litigated, there are currently no limitations on the length of time a defendant owes fines or costs. They remain owed until paid.<sup>37</sup>

The length of time that restitution is owed depends on the type of restitution.

- If restitution is imposed as part of the sentence under 18 Pa.C.S. § 1106, it remains owed until paid. If restitution is imposed instead only as a condition of probation under 42 Pa.C.S. § 9763(b)(10), the obligation to pay any unpaid restitution expires at the conclusion of probation.<sup>38</sup> Refer to “An ACLU-PA Guide to the Imposition of Fines, Costs, or Restitution at Sentencing” for additional information.<sup>39</sup>
- For cases in which the offense occurred before December 3, 1998, the length of time that restitution remains owed is limited to the length of time to which the defendant *could* have been jailed for the offense.<sup>40</sup>

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<sup>34</sup> 42 Pa.C.S. § 9728(a).

<sup>35</sup> *Id.*

<sup>36</sup> Jeffrey Ward, et al., “Imposition and Collection of Fines, Costs, and Restitution in Pennsylvania Criminal Courts: Research in Brief,” ACLU of Pennsylvania (Dec. 18, 2020), [www.aclupa.org/courtdebt](http://www.aclupa.org/courtdebt).

<sup>37</sup> The closest statutory instruction is in 42 Pa.C.S. § 9728(c), which specifies that civil judgments for court debt remain viable even if they “exceed the maximum term of imprisonment to which the offender could have been sentenced for the crimes of which he was convicted or the maximum term of confinement to which the offender was committed.”

<sup>38</sup> *Commonwealth v. Karth*, 994 A.2d 606, 610 (Pa. Super. Ct. 2010).

<sup>39</sup> Available at [www.aclupa.org/finesandcosts](http://www.aclupa.org/finesandcosts).

<sup>40</sup> Prior to the adoption of Act 121 in 1998, Section 1106 provided that “the period of time during which the offender is ordered to make restitution shall not exceed the maximum term of imprisonment to which the offender could have been sentenced for the crime of which he was convicted.” Act 121 removed that language and abolished the time limitation. See *Commonwealth v. Griffiths*, 15 A.3d 73, 78 (Pa. Super. Ct. 2010): “The version of Section 1006(c)(2)(ii) in effect in 1995 authorized the court to collect restitution and to enforce the restitution order until expiration of the statutory maximum sentence that could have been imposed. See 18 Pa.C.S.A. § 1106. Appellant

## What are the potential consequences for not paying court debt?

Defendants face a variety of consequences for nonpayment of court debt. Some require that the defendant have the ability to pay and willfully refuse to pay, while other consequences are currently imposed without regard for the defendant's financial circumstances.

- Contempt proceedings and incarceration:
  - Both courts of common pleas and magisterial district courts can hold contempt hearings for nonpayment.
  - A defendant can only be found in contempt if the nonpayment is willful. If nonpayment is willful, the defendant may be jailed, although the court does not *have* to jail a defendant for willful nonpayment.
  - For additional details on the substantial body of law governing contempt proceedings for nonpayment, refer to “An ACLU-PA Guide to Contempt Proceedings Following Nonpayment of Fines, Costs, or Restitution.”<sup>41</sup>
- Probation revocation and incarceration or additional probation:
  - Nonpayment of fines or restitution is a technical violation of probation *if* the defendant willfully refuses to pay.<sup>42</sup> The payment of costs, however, is never a valid condition of probation.<sup>43</sup>
  - Even if a defendant is not ultimately convicted of a probation violation, and is thus not either incarcerated or subject to additional probation, the defendant may still have been arrested and spent time in jail while waiting for a *Gagnon* I or II hearing, causing irreparable harm to the defendant.
  - For additional details on the substantial body of law governing probation revocation proceedings for nonpayment, refer to “An ACLU-PA Guide to Probation/Parole Revocation Hearings for Nonpayment of Fines, Costs, or Restitution.”<sup>44</sup>
- Arrest on warrants for failure to pay:
  - While courts of common pleas tend not to issue warrants for nonpayment—generally scheduling hearings instead—most magisterial district courts and the Traffic Division of the Municipal Court of Philadelphia *do* routinely issue warrants for nonpayment, without ever scheduling hearings.
    - Moreover, common pleas courts *do* issue warrants for failure to appear. Defendants should be careful not to miss any hearings related to nonpayment of fines, costs, or restitution, or else they risk arrest.

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faced a statutory maximum sentence of ten (10) years on each second degree felony burglary count. See 18 Pa.C.S.A. § 1103. Therefore, under the version of the statute in effect when Appellant was sentenced, the court retained authority to compel payment of restitution for twenty (20) years, or until 2016.”

<sup>41</sup> Available at [www.aclupa.org/finesandcosts](http://www.aclupa.org/finesandcosts).

<sup>42</sup> *Commonwealth ex rel. Powell v. Rosenberry*, 645 A.2d 1328, 1331 (Pa. Super. Ct. 1994).

<sup>43</sup> *Commonwealth v. Hudson*, 231 A.3d 974, 980-81 (Pa. Super. Ct. 2020).

<sup>44</sup> Available at [www.aclupa.org/finesandcosts](http://www.aclupa.org/finesandcosts).

- These courts issue more than 500,000 such post-dispositional warrants every year for nonpayment.<sup>45</sup> Defendants are often arrested and held in jail for up to 72 hours while waiting for a hearing on the reasons for nonpayment.
- Driver’s license suspension:
  - If a defendant falls behind on payments in a traffic case, the court is required to notify PennDOT.<sup>46</sup> PennDOT, in turn, suspends the defendant’s driver’s license until the defendant enters into a payment plan with the court and the court notifies PennDOT that the defendant has paid in full or has entered “into an agreement to make installment payments.”<sup>47</sup>
  - According to data from PennDOT obtained through a public records request, it suspends tens of thousands of driver’s licenses every year for nonpayment.
- Denial of Temporary Assistance for Needy Families (“TANF”):
  - Defendants who owe fines, costs, or restitution for misdemeanor or felony convictions are not eligible to receive TANF *unless* they are “in compliance with an approved payment plan.”<sup>48</sup>
  - This can be a catch-22. To receive TANF, the family’s income must be below the cash grant size—\$316 a month for two people, \$403 a month for a family of three—and total assets must be under \$1,000. Such individuals are per se unable to afford to pay the court, however.
  - County public assistance offices regularly check with courts to ensure that applicants are complying with payment plans. The best way for defendants to handle this problem is to get on a payment plan with the court that is \$0 or some nominal amount each month.
- Denial of food stamps through the Supplemental Nutrition Assistance Program (“SNAP”):
  - If a defendant has an open warrant—including merely for falling behind on payments of fines, costs, or restitution—the defendant is not able to receive or renew food stamp benefits.<sup>49</sup>
- Ineligibility of have misdemeanors sealed through Clean Slate:
  - If a defendant owes restitution, the defendant cannot have the case sealed through Clean Slate Limited Access until the restitution is paid in full.<sup>50</sup>
  - As a result of Act 83 of 2020, defendants no longer have to pay fines and costs to have their cases sealed.
- Denial of pardons:

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<sup>45</sup> Administrative Office of Pennsylvania Courts, “2019 Caseload Statistics of the Unified Judicial System of Pennsylvania,” <http://www.pacourts.us/news-and-statistics/research-and-statistics/caseload-statistics>. Adding the total number of post-disposition warrants in traffic and non-traffic cases issued in 2019 by magisterial district courts on page 195 (494,540) with the post-disposition warrants issued by the Traffic Division of the Philadelphia Municipal Court on page 241 (94,193) demonstrates the scope of the warrant problem.

<sup>46</sup> Pa.R.Crim.P. 470.

<sup>47</sup> *Id.* See also 75 Pa.C.S. § 1533.

<sup>48</sup> 62 P.S. § 432(9). See also Pennsylvania Department of Public Welfare, “Criminal History Desk Guide,” [http://services.dpw.state.pa.us/oimpolicymanuals/snap/503\\_General\\_Information/503\\_Appendix\\_B.htm](http://services.dpw.state.pa.us/oimpolicymanuals/snap/503_General_Information/503_Appendix_B.htm) (explaining that a defendant must have paid all fines, costs, or restitution, or be on a court-approved payment plan to receive benefits).

<sup>49</sup> *Id.* (explaining that an open warrant for violating a term of probation prevents eligibility for SNAP).

<sup>50</sup> 18 Pa.C.S. § 9122.2 (requiring that defendants first pay “all court-ordered restitution”).

- Although the Constitution explicitly vests the Governor with the power to “remit fines and forfeitures” as part of the pardon power, the current policy of the Board of Pardons is to not approve any individuals for a pardon unless they have paid fines, costs, and restitution in full.<sup>51</sup>

The best way to ensure that a defendant is not punished in some manner for nonpayment is to tackle the debt at sentencing and ensure that the court only imposes an amount, if any, that the defendant can afford. Defendants should also be on affordable payment plans and can seek to modify payment plans if they are or become unaffordable, especially if circumstances change. Defendants should communicate with court collections staff and work with them, rather than ignoring the obligation to pay fines, costs, and restitution. Defendants who do not have lawyers should review the self-help guides on our website, [www.aclupa.org/finesandcosts](http://www.aclupa.org/finesandcosts), and contact us if they need assistance.

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<sup>51</sup> Pennsylvania Board of Pardons, “Pennsylvania Guide to Pardons” at 3 (2019), <https://www.bop.pa.gov/Documents/P2P%20Pardon%20Booklet-Finalized%20Version-12-4-19.pdf>.